

OLSEN & CHAMBERLAIN

ATTORNEYS AT LAW

225 NORTH 100 EAST

POST OFFICE BOX 100

RICHFIELD, UTAH 84701

TEX R. OLSEN  
KEN CHAMBERLAIN  
RICHARD K. CHAMBERLAIN

TELEPHONE 801-896-4461  
TELEFAX 801-896-5441

January 4, 1996

Mr. Kirk Forbush, Area Engineer  
Division of Water Rights  
130 North Main  
Richfield, Utah 84701

Re: San Pitch River Structure Near  
"The Drainage District"

Dear Kirk:

You will recall our discussion some time near December 5th concerning the apprehension of Gunnison Irrigation Company ("Gunnison"), and others similarly situated, that the parties who have maintained an obstruction in the area which can be generally described as existing approximately three-fourths (3/4ths) of one mile below and distant from the land irrigated by the San Pitch Drainage land.<sup>1</sup> The obstruction is being implemented by those individuals who have no water rights; but they nevertheless plan on continuing, without regulation and without regard to the absence of water rights, to flood an area which has no decreed right but which activity results in diminution of the general water sources of the San Pitch River and the prior-in-time rights of Gunnison.

In 1952 and 1953 agreements were adopted of a tentative and non-binding nature beyond the purposes sought to be established at that time.

Gunnison authorized the construction only of a gate or "control structure" with the object of advancing - not diminishing - the natural flow of water of the San Pitch River generally and in the San Pitch River Drainage District particularly.

Activity of the contracting parties who owned land, but no water right or rights, above in elevation and channel flow of the permitted gate plan again "to put the plank in [the] gate and

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<sup>1</sup>The principal reason the land inundated cannot be described by reference to the cadastral survey is that the land has no decreed or appurtenant water right bearing a legal description.

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keep [the] plank in [the] gate until [the offending damage] has passed."

It was never intended, conceded or authorized that planks or boards could continue in the location discussed in the agreements of 1952 and 1953. We are attaching copies of those agreements for your easy reference.

At the time of our discussion you suggested that the matter be raised at the Lower San Pitch Water Users Association meeting scheduled for January 17th.

The Executive Committee of Gunnison has determined that it is no longer appropriate or in any degree beneficial to the owners of the water rights and in any manner legal for the boards or planks to be replaced in the area described in the attached agreements.

Each and both of the agreements annexed provide that the purpose of the control gate across the channel of the San Pitch River approximately 1400 feet northwest from the county bridge crossing the San Pitch River west of Manti on River Lane are to be exclusively within the discretion of Gunnison. It is notable that neither the 1952 or 1953 agreements grant a water right and that there is no consideration for the temporary utilization of the obstruction for the purpose of inundating or flooding of land with San Pitch River water.

Gunnison hereby specifically requests that a Cease and Desist Order be issued to the individuals proposing to re-establish the planks, flash-boards, or other methods of backing up the water be terminated, abandoned, and otherwise rescinded (if "recision" is necessary).

The restoration or reconstruction of the excess planking is of significant detriment to Gunnison, interferes with Gunnison's decreed water rights, and allows landowners with no water rights to irrigate their land without the ownership of a right or entitlement to utilize water of the San Pitch River.

Gunnison does not wish to initiate litigation but does, by this letter, place all parties on notice that unless the Cease and Desist Order is issued and thereafter enforced litigation will be necessary. Gunnison is depending on the office of the State Engineer to support and enforce the termination of this interfering obstruction and the parties affected should be notified of that decision immediately or at the very latest not beyond the Lower San

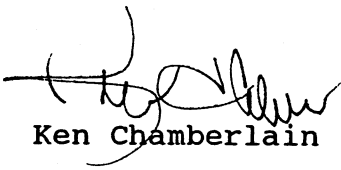
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Pitch Water Users Association meeting or January 17, 1996,  
whichever date or event first occurs.

Yours very respectfully,

OLSEN & CHAMBERLAIN

By

  
Ken Chamberlain

KC:sb

Encls.

cc: Eugene Jensen  
Mardell Jensen

ENTRY NO. 203220 406  
RECORDED 3-31-65 AT 11:00 A. M. BOOK 125 PAGE 307  
REQUEST OF August of Donald K. Burton  
FEE PAID MAE S. GRAHAM, SANPITCH COUNTY RECORDER  
4.00 BY W. A. Burton DEPUTY

CRANKING B. H. D. M. J.  
CRANKING B. H. D. M. J.

RECEIVED

JAN 11 1966

WATER RIGHTS  
SALT LAKE

Sanpetch County  
State of Utah

AGREEMENT

This agreement made and entered into this        day of       , 1952, by and between The Gunnison Irrigation Company, whose address is Gunnison, Utah and Sanpitch River Drainage District, whose address is Ephraim, Utah, and Kjar Brothers, Aldon K. Barton & Sons, Paul Keeler, Calvin Mickelson, Lalo Boyington, Clint Boyington, Lloyd Boyington and Edward Tooth; their addresses later Manti, Utah.

OBJECT: The object of this agreement is to accomplish an emergency flood restoration program beneficial to each and both of the above named parties of this agreement.

PURPOSE: It is the intention of the parties to accomplish the above mentioned object in the manner and under the conditions hereinafter stipulated, for their mutual benefit.

WITNESSETH:

A. The Gunnison Irrigation Company, for and in consideration of the benefits to be derived in the carrying out of this agreement and to accomplish the object herein set forth, does hereby promise and agree as follows:

1. To grant to the Sanpitch River Drainage District, and above interested parties, and their agents the right and permission to construct a control gate or similar structure across the present, improved, or new channel of the Sanpitch River for the purpose of regulating, controlling, and facilitating the removal of excess water from the area under and controlled by the Sanpitch River Drainage District and parties listed before.

2. That the Gunnison Irrigation Company grants the permission to establish said structure PROVIDING that above mentioned development and structure does not hold, retain or otherwise impound the natural flow and flood of waters draining into the Sanpitch River from area or areas above and upstream from the regulating structure above the present level of the River as set out below.

B. The Sanpitch River Drainage District and above listed interested parties, in consideration of the promises and agreements made on the part of the Gunnison Irrigation Company herein set forth, agrees as follows:

1. To establish or construct, to operate and maintain the herein referred to control structure at no expense whatsoever to the Gunnison Irrigation Company.

2. To establish and construct a permanent reference point or bench mark of elevation plain and visible to all interested parties from which the permanent retention features of the control structures will be established. This bench mark to be referred to a temporary bench mark already set at elevation 105.8 and the water level referred to this bench mark to be at elevation 98.3 or 7.5 feet below said temporary bench mark which is the top of rubble masonry abutment to an abandoned flume located approximately 1400 feet north west of County bridge spanning Sanpitch River west of Manti on River Lane.

3. To provide ample and adequate facilities for the present natural flow of water to pass over or by pass said structure.

4. Whenever in the opinion of the board of directors of the Gunnison Irrigation Company there is danger to the dam of the Gunnison Reservoir on account of excess water then it shall be the privilege of the Gunnison Irrigation Company to put the plank in said gate and keep plank in gate until the danger has passed. Or if damage is being done to roads, bridges or water gates below said reservoir then the plank shall be kept in the gate until danger of such damage is passed.

IN WITNESS WHEREOF, the parties hereto have hereunder subscribed their names as of the date written below,

Gunnison Irrig Co  
Name of Corporation

By Harold Nielson

Title President

Date Jan 9 1953

Sanpitch  
Sanpitch River Drainage District  
Name of Corporation

By Joseph C. Nielson

Title President

Date Jan. 9, 1953

Individuals

Steve Bros. Bylund & Son  
Kjor Brothers

Paul Keeler  
Paul Keeler

Clinton Boyington  
Lyle Boyington

Lloyd Boyington  
Lloyd Boyington

Alden K. Barton & Sons  
Alden K. Barton & Sons

Calvin L. Mickelson  
Calvin Mickelson

Clinton Boyington  
Clinton Boyington

Edward Tooth  
Edward Tooth

CERTIFICATE

I, J. L. Sommers, certify that Harold Nielson who signed the above agreement on behalf of the Gunnison Irrigation Company and Joseph C. Nielson who signed the same agreement on behalf of the Sanpitch River Drainage District, was then President of the Gunnison Irrigation Company and President of the Sanpitch River Drainage District; that I know their signatures, and their signatures thereto is genuine, and that said agreement was duly signed, sealed and attested for in behalf of the above named organizations.

By J. L. Sommers

Title \_\_\_\_\_

SEAL

ENTRY NO. 03837 404  
RECORDED 3-31-65 AT 11:30 AM BOOK 125 PAGE 405  
REQUEST OF Donna K. Barton  
FEE PAID - MAE S. GRAHAM, SANPITCH COUNTY RECORDER  
\$ 4.40 BY Donna K. Barton DEPUTY

GRANTOR'S Donna K. Barton  
GRANTEE'S Donna K. Barton

RECEIVED

JAN 11 1996

WATER RIGHTS  
SALT LAKE

A G R E E M E N T

THIS MEMORANDUM OF AN AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 1952, by and between THE SANPITCH DRAINAGE DISTRICT, whose principal place of business is Ephraim, Utah, the party of the first part, and Alden K. Barton & Sons, Kjar Bros., Paul F. Keeler, Calvin Mickelson, Clinton Boyington, Layfe Boyington, Lloyd Boyington, and Edward K. Tooth, all of Manti, Utah the parties of the second part,

W I T N E S S E T H:

WHEREAS, the interested parties, in cooperation with the United States Government, propose to construct a control gate or similar structure across the channel of Sanpitch River at a point approximately 1400 feet northwest from the county bridge spanning said River west of Manti on River Lane for the purpose of regulating the flow of the waters of the said River and facilitating the drainage of lands within the boundaries of said district; and WHEREAS, the operation and maintenance of said structure will affect the lands of the parties of the second part, which are irrigated in part by the flow of water in said River; and

WHEREAS, the parties hereto desire to provide by this agreement for the future operation of the proposed control gate or similar structure;

NOW, THEREFOR, in consideration of the mutual promises and agreements herein contained, the parties hereto promise and agree as follows:

1. The Parties of the second part may put the plank in the control structure and keep it in so as to thoroughly saturate their lands until May 15th when the plank must be removed and kept out until the standing surface water on the lands of the Drainage District has been removed unless otherwise agreed upon by the interested parties. The plank may then be replaced in control structure whenever desired by the parties of the second

part so long as the water is not backed up onto the surface of the land within the Drainage District. In years of excess water this agreement shall not be in effect to conflict with the agreement with the Gunnison Irrigation Company.

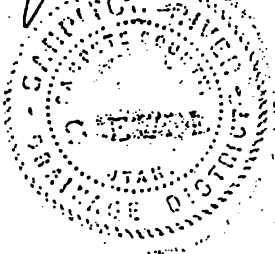
IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

*The Sanpitch River Drainage District*  
(The Sanpitch Drainage District)

By Joseph A. Nelson  
President

Attest:

Garth Thompson  
Secretary  
(Corporate Seal)



THE PARTY OF THE FIRST PART

✓ Alden K. Barton & Sons  
(Alden K. Barton & Sons)

✓ By George A. Barton

✓ Kjar Bros.  
(Kjar Bros.)

By Leonard Kjar

✓ Paul F. Keeler  
(Paul F. Keeler)

✓ Calvin L. Mickelson  
(Calvin Mickelson)

✓ Clinton Boyington  
(Clinton Boyington)

✓ Lyle Boyington  
(Lyle Boyington)

✓ Lloyd Boyington  
(Lloyd Boyington)

✓ Edward K. Tooth  
(Edward K. Tooth)

PARTIES OF THE SECOND PART

Witness:

\_\_\_\_\_